

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-143333-07

Date:

March 26, 2008

### Legend

Grantor =

Child =

Trust 1 =

Trust 2 =

Dear :

This is in response to your letter of September 17, 2007, submitted on your behalf by your authorized representative, requesting a ruling concerning the application of section 2041 of the Internal Revenue Code.

Grantor created Trusts 1 and 2 for the benefit of her daughter-in-law and the children of her son and daughter-in-law. Each trust is an irrevocable trust, and each was created prior to October 21, 1942. Each trust creates a separate share for each child. Child is one of the children of Grantor's son and daughter-in-law. The separate share for the benefit of Child is the subject of this ruling. Each trust provides that when Child reaches the age of majority, income is payable to Child for life. ARTICLE SECOND, Section (8) of each trust provides that upon Child's death, that share shall be disposed of as Child shall appoint by will, "provided however, that such appointees are 'members of the family' as hereinafter defined." ARTICLE NINTH of each trust provides:

Whenever the phrase “members of the family” is used in this Indenture in relation to any person, it shall be interpreted to mean and include the husband or wife, as the case may be, and the children or other descendants of said person, and the children of Grantor and their descendants, but no other persons.

Child has requested a ruling that the powers of appointment contained in Trusts 1 and 2 are not general powers of appointment within the meaning of section 2041(b)(1), and that the exercise of the powers will not cause the property subject to the powers to be includible in Child’s gross estate.

Section 2041(a) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which a general power of appointment created on or before October 21, 1942, is exercised by the decedent by will, or by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent’s gross estate under sections 2035 to 2038, inclusive.

Section 2041(b)(1) provides, with exceptions not relevant here, that the term “general power of appointment” means a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate.

Section 20.2041-1(c)(1) of the Estate Tax Regulations provides that the term “general power of appointment” as defined in section 2041(b)(1) means any power of appointment exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate. Section 20.2041-1(c)(1)(a) provides that a power of appointment is not a general power if by its terms it is exercisable only in favor of one or more designated persons or classes other than the decedent or his creditors, or the decedent’s estate or the creditors of his estate.

Here, Child may appoint to the class consisting of Child’s spouse, Child’s descendants, and Grantor’s descendants. Because Child’s power is a testamentary power, Child may not appoint any part of Trust 1 or Trust 2 to Child or to Child’s creditors during Child’s life. Further, because Child’s power of appointment is expressly limited to a permissible class of appointees, Child may not appoint the property in Trust 1 or Trust 2 to Child’s estate or the creditors of Child’s estate.

Accordingly, based on the information submitted and the representations made, we conclude: (1) the testamentary powers of appointment granted Child in Trust 1 and Trust 2 do not constitute general powers of appointment within the meaning of § 2041(b)(1); and (2) Child’s exercise of the powers will not cause the property subject to the powers to be includible in Child’s gross estate.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

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James F. Hogan  
Senior Technician Reviewer, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure (1)